

**IN THE SUPREME COURT OF SEYCHELLES****FELIX MEME****PLAINTIFF****VERSUS****JOACHIM DODIN****DEFENDANT**Civil Side No 150 of 2003

Mr. F. Ally for the Plaintiff

Mr. Shah for the Defendant

**JUDGMENT****Perera J**

This is a delictual action in which the plaintiff claims damages for personal injuries, allegedly caused by the defendant on 22<sup>nd</sup> April 2002 at Amitie, Praslin. It is not in dispute that the plaintiff was an ex-employee of the S.P.T.C . and the defendant was the Area Manager of that Corporation at the material time. The plaintiff's case is that he was giving a lift to one Cliff Velle, an SPTC driver who on the way requested him to take him to the SPTC Depot to enable him to check his working hours for the next day. The plaintiff testified that when he parked his pickup in the yard he saw the defendant coming towards him. He had nothing in his hand at

that time. The defendant asked him “*haven’t* you stopped working here, why are you coming here?” Suddenly he felt something heavy hitting the back of his head. When he turned, the defendant had the handle of a big hammer in his hand. He hit him once more when he got down and he fell bleeding near the pick up door. Cliff Velle asked the defendant to stop the assault. When the defendant was walking back to his office, the plaintiff, who was bleeding and weak, followed him and threw a block of cement on the office door. He then became unconscious. He denied drinking a beer at the time the defendant approached him.

Cliff Velle, corroborated the evidence of the plaintiff. He stated that there were empty bottles of beer in the plaintiff’s pickup together with pieces of wood. He saw the defendant hitting the plaintiff on the head twice, with a piece of wood taken from the plaintiff’s pickup. He denied that the defendant was acting in self defence, and that the injuries were caused when the defendant was waiving the stick to ward off blows from the plaintiff.

Both the plaintiff and Cliff Velle, who had worked under the defendant when he was the Manager, stated that although the defendant was a strict disciplinarian, at times he was aggressive and exceed his authority.

The defendant in his testimony however stated that he approached the plaintiff as he saw him drinking a beer while seated in a pickup,

in an area where drinking was prohibited. He asked him to move away, but he got down and came towards him telling "*since long I have been telling I will give it to you, today I will give you*". When the plaintiff threatened to assault him with his fist, he picked up a piece of wood from the pickup and waived it in defence. The plaintiff tried to evade the stick, but it hit the back of his head. He denied that he intentionally caused injury to the plaintiff. He further stated that he picked up the stick first, as he feared that the plaintiff would use the other tools in the pickup against him.

Dr. Roland Barbe produced the Medical Report (exhibit P1). He stated that the plaintiff was referred to the Victoria Hospital by the Baie Ste Anne Praslin Hospital on the same day he suffered the injuries. A laceration in the occipital region of the head had already been sutured on Praslin. An x-ray of the skull showed no fracture. Although he complained of loss of vision on admission, this condition improved within two days at the D'offay Ward. He was discharged thereafter with a prescription for an antibiotic for 3 days and instructions to remove the sutures on 28<sup>th</sup> April 2002. He stated that it was a normal procedure for a patient with a head injury to be warded for neurological observation.

The plaintiff, in the course of his testimony produced his blood stained shirt (*exhibit P1*). Undoubtedly, he had bled profusely from his head injury. He also showed the scar on his head.

On a consideration of the evidence adduced in the case, the Court is satisfied that the defendant had exceeded his right to maintain discipline in his work place, by mounting a physical attack which was grossly out of proportion to the exigency of the situation he was faced with. Article 1382(3) of the Civil Code, defines “*fault*”, as

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*“3. Fault may also consist of an act or omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest”.*

Hence the Court finds the defendant liable in damages.

As regards the quantum of damages, the plaintiff has claimed Rs.75,000 as moral damages for shock, pain, suffering, anxiety, distress and discomfort, and a further sum of Rs.75,000 for disfigurement and loss of amenities of life. The claim for Rs.2000 in respect of damage to the pickup was not pursued.

The laceration on the head should have necessarily caused immense pain and suffering to the plaintiff. The defendant himself admitted that the plaintiff collapsed after receiving the injuries. Hence there is evidence to conclude that the injury caused sufficient trauma to make the plaintiff unconscious, albeit momentarily, and also to affect his vision. The plaintiff has also a

scar on his head which is unnoticeable, as it is covered by hair. There is however no medical evidence as regards loss of amenities of life.

Considering previous awards of this Court in respect of comparative injuries; In the case of **Gonsalves Beaudoin v. Joseph Estro (CS. 165 of 1986)**, the plaintiff was assaulted by the defendants with iron rods. Injury was caused to the right eye and cheek bones. Subsequent to surgical operations, the bones were reset, but his vision was impaired. The Court awarded a sum of Rs.20,000 as moral damages.

In **Brigitte Servina v. Rita Jupiter (S.C.A. No. 18 of 1994)** the Court of Appeal approved an award of Rs.10,000 in respect of an assault which involved abrasions to the head, cheek and lips, and bruises on the calf.

In **Selwyn Esparon & Ors v. Jourdan Nibourette (C.S. 136 of 1998)** the defendant was found liable for causing bodily injuries to the three plaintiffs by stabbing with a knife. The plaintiffs received varying injuries to different parts of their bodies. The 1<sup>st</sup> plaintiff received a deep chest injury which the Medical Officer opined was serious. He was awarded Rs.15,000 as moral damages. The 2<sup>nd</sup> plaintiff had only lacerations, and was awarded Rs.2000. The 3<sup>rd</sup> plaintiff suffered a stab injury on his chest which was sutured and

was warded in hospital for five days. He also had a scar. The Court awarded him Rs.10,000.

In delict, damages are compensatory and not punitive. In that respect, the damages claimed by the plaintiff in the present case are excessive. Hence on a consideration of previous awards of this Court for comparative injuries, together with the actual injuries suffered by the plaintiff, I award a global sum of Rs15,000 as moral damages including the disfigurement caused by the scar.

Judgment is accordingly entered in favour of the plaintiff in a sum of Rs.15,000, together with interest and costs taxed on the Magistrates' Court scale of fees and costs.

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A.R. PERERA

**JUDGE**

Dated this 6<sup>th</sup> day of June 2007